

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 15.403–1 by revising paragraphs (c)(3)(ii)(B) and (c)(3)(ii)(C) to read as follows:

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining cost and pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial item are not exempt from the requirement for submission of cost or pricing data on the basis of the exemption provided for at FAR 15.403–1(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining cost and pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 2005–31; FAR Case 2008–014; Item III; Docket 2009–0006; Sequence 1]

RIN 9000–AL17

Federal Acquisition Regulation; FAR Case 2008–014, Amendments to Incorporate New Wage Determinations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to preclude a possible scenario where a contracting officer has to unnecessarily reevaluate proposals already eliminated from a competition.

DATES: *Effective Date:* April 20, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–31, FAR case 2008–014.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Labor (DOL) regulations set forth at 29 CFR 1.6(c)(2) and (3) require that, when contracting by negotiation, the contracting agencies must place modified wage determinations (WDs) into solicitations and contracts if the WDs are received before contract award. FAR 22.404–6(c) establishes that when contracting by negotiation, all written actions modifying WDs received by the contracting agency before contract award, or modifications to general WDs published on the Wage Determination Online (WDOL) before award, shall be incorporated into the solicitation. If an effective WD is received by the contracting officer before award, the contracting officer shall follow the procedures in FAR 22.404–5(c)(3) or (4). FAR 22.404–5(c)(3) covers contracting by negotiation when the closing date has passed; and it requires that a new WD with a changed wage rate must be

furnished as an amendment to all prospective offerors that submitted proposals. There is an apparent inconsistency between this and FAR 15.206(c) which requires that amendments issued after closing shall be issued to all offerors that have not been eliminated from the competition.

This final rule amends the Federal Acquisition Regulation to correct the inconsistency at FAR 22.404–5(c)(3) by changing the language to indicate a contracting officer shall amend solicitations to incorporate new wage determinations and furnish the wage rate information to all offerors that have not been eliminated from the competition, if the closing date for receipt of offers has already passed.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 22 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–31, FAR case 2008–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the final rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 22

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 22 as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

■ 1. The authority citation for 48 CFR part 22 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

22.404-5 [Amended]

■ 2. Amend section 22.404-5 in paragraph (c)(3) by removing "submitted proposals" and adding "have not been eliminated from the competition" in its place.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-31; FAR Case 2008-021; Item IV; Docket 2009-0005; Sequence 1]

RIN 9000-AL16

Federal Acquisition Regulation; FAR Case 2008-021, Least Developed Countries that are Designated Countries

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement a revision by the United States Trade Representative (USTR) to the list of Least Developed Countries that are designated countries under the Trade Agreements Act of 1979.

DATES: Effective Date: March 19, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-31, FAR case 2008-021.

SUPPLEMENTARY INFORMATION:

A. Background

The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The USTR has revised the list of Least Developed Countries that are designated as eligible countries under the Trade Agreements Act of 1979, as amended, to add Liberia and to remove Cape Verde.

This final rule amends the FAR to revise (a) the definitions of "designated country" and "least developed country"

at FAR 25.003 and (b) the definition of "designated country" in the clauses at FAR 52.225-5, Trade Agreements, and 52.225-11, Buy American Act—Construction Materials Under Trade Agreements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAC 2005-31, FAR case 2008-021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, et seq.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

■ 2. Amend section 25.003 by revising paragraph (3) of the definition "Designated country" and the definition "Least developed country" to read as follows:

25.003 Definitions.

* * * * *

Designated country means any of the following countries:

* * * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh,

Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

Least developed country means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(31) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAR 2009)

* * * * *

(b) * * * (31) 52.225-5, Trade Agreements (MAR 2009) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

* * * * *

■ 4. Amend section 52.225-5 by revising the date of the clause and in paragraph (a) in the definition "Designated country", revising paragraph (3) to read as follows:

52.225-5 Trade Agreements.

* * * * *

TRADE AGREEMENTS (MAR 2009)

(a) * * * Designated Country * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia,